

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
 )  
ROBERT R. RILEY, ) Bankruptcy Case No. 99-31533  
 )  
Debtor. )

OPINION

This matter having come before the Court on a Motion for Relief from the Automatic Stay, or in the Alternative, for Adequate Protection, filed by BMW Financial Services NA, Inc., and Response to Motion to Modify the Automatic Stay, filed by the Debtor; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Debtor filed for relief under Chapter 13 of the Bankruptcy Code on May 27, 1999. On the same date, the Debtor filed a Chapter 13 Plan of Reorganization in which BMW Financial Services NA, Inc. was scheduled as a secured creditor to be paid the amount of \$24,600 as a secured debt with the balance remaining to be treated as an unsecured debt, along with other unsecured creditors. There is no dispute that BMW Financial Services NA, Inc. was notified of the filing of the Debtor's bankruptcy and was sent a copy of the Debtor's Chapter 13 Plan of Reorganization. Pursuant to notice sent by the Court to BMW Financial Services NA, Inc., the Creditor was allowed until July 5, 1999, to file an objection to the Debtor's Chapter 13 Plan. It is evident that BMW Financial Services NA, Inc. did receive notice of the Debtor's

bankruptcy, and that BMW Financial Services NA, Inc. did file a proof of claim on June 28, 1999. This date was before the date of the Section 341 meeting of creditors on June 29, 1999, and also before the date for filing of objections to confirmation. The record is clear that BMW Financial Services NA, Inc. never filed an objection to confirmation of the Debtor's Chapter 13 Plan of Reorganization, and the Plan was duly confirmed by the Court on September 24, 1999.

On December 8, 1999, Debtor filed an objection to the secured proof of claim of BMW Financial Services NA, Inc. Following this objection the parties entered an Agreed Order on or about February 9, 2000, settling the secured claim of BMW Financial Services NA, Inc. at the sum of \$24,400. Thereafter, on or about January 18, 2000, BMW Financial Services NA, Inc. filed the instant Motion for Relief from the Automatic Stay, or in the Alternative, for Adequate Protection, seeking the return of the vehicle at issue on the basis that the agreement between BMW Financial Services NA, Inc. and the Debtor was, in fact, a lease and not a security agreement. The record indicates that the vehicle in question is insured, and that, as of March 22, 2000, the Chapter 13 Trustee has distributed the sum of \$3,727.93 to BMW Financial Services NA, Inc. pursuant to the terms of the Debtor's confirmed Plan.

Under 11 U.S.C. §§ 1327(a) and (c), it is stated that:

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

In interpreting this section, the Seventh Circuit has ruled, in the case of In re Chappell. 984

F.2 775 (7th Cir. 1993), that:

As a general rule, the failure to raise an "objection at the confirmation hearing or to appeal from the order of confirmation should preclude . . . attack on the plan or any provision therein as illegal in a subsequent proceeding."

This proposition of law has been steadfastly applied in the Bankruptcy Court in the Southern District of Illinois, and is evidenced by the Court's ruling in the case of In re Janice Wilson, Bankr. Case No. 98-32288, where, in an identical fact situation, the Court found that, under 11 U.S.C. § 1327, the creditor was bound by the language of the confirmed Chapter 13 Plan, which treated the creditor as being a secured creditor rather than a vehicle lessor. This proposition of law has also been followed in other Courts, as is evidenced in the case of In re Wakefield, 217 B.R. 967 (Bankr. M.D. Ga. 1998), cited by the Debtor in his brief in support of his objection to the Motion for Relief from the Automatic Stay.

In conclusion, the Court finds that a confirmed plan sets the limits of a creditor's rights pursuant to 11 U.S.C. § 1327. Under the Debtor's Chapter 13 Plan, which was duly confirmed by the Court, Creditor, BMW Financial Services NA, Inc., has the rights of a secured creditor and cannot, at this time, assert the rights of a lessor. As such, the Motion for Relief from the Automatic Stay, or in the Alternative, for Adequate Protection is denied, and the Court finds that, under the terms of the Debtor's Chapter 13 Plan of Reorganization, adequate protection is provided for the secured interest of BMW Financial Services NA, Inc. so long as the Debtor continues to make the payments as called for under the confirmed plan and maintains insurance on the vehicle.

ENTERED: March \_\_\_\_\_, 2000.

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GERALD D. FINES  
United States Bankruptcy Judge

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O R D E R

For the reasons set forth in an Opinion entered on the \_\_\_\_\_ day of March 2000;

IT IS HEREBY ORDERED that the Motion for Relief from the Automatic Stay, or in the Alternative, for Adequate Protection filed by Creditor, BMW Financial Services NA, Inc., is DENIED.

ENTERED: March \_\_\_\_\_, 2000.

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GERALD D. FINES  
United States Bankruptcy Judge